



## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 245

[FNS-2022-0044]

RIN 0584-AE93

### Child Nutrition Programs: Community Eligibility Provision – Increasing Options for Schools

**AGENCY:** Food and Nutrition Service (FNS), Department of Agriculture (USDA).

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Community Eligibility Provision (CEP) regulations by lowering the minimum identified student percentage (ISP) from 40 percent to 25 percent.

Lowering the minimum ISP will give States and schools greater flexibility to offer meals to all enrolled students at no cost when financially viable. As a result of this rule, more schools are eligible to participate in CEP and experience the associated benefits, such as increasing students' access to healthy, no-cost school meals; eliminating unpaid meal charges; reducing stigma; and streamlining Program administration and meal service operations.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Michelle Frey, Branch Chief, Policy Design Branch, School Meals Policy Division – 4<sup>th</sup> floor, Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314, telephone: 703-305-2590.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Community Eligibility Provision (CEP) is an option for eligible schools to offer meals at no cost to all enrolled students without collecting household applications. Authorized by the

Healthy, Hunger-Free Kids Act of 2010 (HHFKA) and codified in regulations at 7 CFR 245.9(f), CEP is a reimbursement alternative for eligible local educational agencies (LEAs) and schools participating in both the National School Lunch Program (NSLP) and School Breakfast Program (SBP).<sup>1</sup> CEP eliminates the need for schools to collect household income applications by sharing eligibility data between specific Federal assistance programs, which can reduce administrative burden for both schools and families.

To be eligible for CEP, an individual school, group of schools, or LEA must meet or exceed the established, minimum identified student percentage (ISP) in the school year prior to implementing CEP. The ISP is the percentage of enrolled students who are certified for free school meals without submitting a household application, such as those directly certified through specific Federal benefits programs (e.g., the Supplemental Nutrition Assistance Program (SNAP) and the Food Distribution Program on Indian Reservations (FDPIR)). For CEP, students who are certified for free meals without a household application are “identified students” (42 U.S.C. 1759a(a)(1)(F)(i); 7 CFR 245.9(f)(1)(ii)).<sup>2</sup> The ISP is calculated by dividing the total number of identified students by the total number of enrolled students:

$$\text{Identified Student Percentage} = \frac{\# \text{ Identified Students}}{\# \text{ Enrolled Students}}$$

Under current regulations, the minimum ISP is 40 percent; therefore, to be eligible for CEP, an individual school, group of schools, or LEA must have an ISP greater than, or equal to, 40 percent (ISP  $\geq$  40 percent) as of April 1 of the school year prior to implementing CEP (7 CFR 245.9(f)(3)(i)).

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<sup>1</sup> On July 29, 2016, the U.S. Department of Agriculture (USDA) published the final rule, National School Lunch Program and School Breakfast Program: Eliminating Applications through Community Eligibility as Required by the Healthy, Hunger-Free Kids Act of 2010 [81 FR 50194, July 29, 2016], which codified CEP requirements that were implemented through statute and policy guidance, at § 245.9(f).

<sup>2</sup> Identified students include students living in households participating in SNAP, Temporary Assistance for Needy Families, and FDPIR. Identified students also include those who are homeless, migrant, runaway, in foster care, or enrolled in Head Start. In some States, students are directly certified through Medicaid direct certification demonstration projects. Students in States participating in the Medicaid direct certification demonstration projects are only included in the ISP if they are certified for free meals (not reduced price meals).

The ISP determines eligibility to participate in CEP and is also the basis of Federal reimbursements for meals served to students in CEP schools. The National School Lunch Act (NSLA) gives the Secretary discretion to establish a CEP “multiplier” between 1.3 and 1.6 that is used to determine the percentage of meals that CEP schools claim at the free and paid reimbursement rate levels (42 U.S.C. 1759a(a)(1)(F)(vii)(II)(aa)). To promote CEP financial viability, USDA codified a multiplier of 1.6 (7 CFR 245.9(f)(4)(vi)). The ISP is multiplied by 1.6 to calculate the percentage of meals reimbursed at the Federal free rate. Any remaining meals, up to 100 percent, are reimbursed at the Federal paid rate.<sup>3</sup>

$\% \text{ Meals reimbursed at Federal free rate} = \text{ISP} \times 1.6$

$\% \text{ Meals reimbursed at Federal paid rate} = 100 - \% \text{ meals reimbursed at Federal free rate}$

CEP requires that LEAs must pay, with non-Federal funds, any costs of offering free meals to all students that exceed the Federal assistance provided. If all operating costs are covered by the Federal assistance provided, then LEAs are not required to contribute non-Federal funds (7 CFR 245.9(f)(4)(vii)).

On March 23, 2023, USDA published a proposed rule in the Federal Register (88 FR 17406), seeking to lower the minimum ISP to 25 percent, and make related, conforming changes to CEP regulatory text at 7 CFR 245.9(f).

As described in detail in the proposed rule, CEP benefits children, families, schools, and communities. Schools participating in CEP often experience an increase in the number of students accessing the SBP and NSLP, resulting in more children benefiting from the advantages these Programs offer.<sup>4</sup> Research demonstrates that access to school meals at no cost improves

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<sup>3</sup> CEP schools only claim meals at the free and paid reimbursement rates. CEP schools do not claim reduced price meals.

<sup>4</sup> USDA’s first comprehensive study since CEP became available nationwide compared the impact of CEP participation in school districts that elected CEP to similar non-participating school districts. The study showed about 7% and 12% higher student participation in NSLP and SBP, respectively, in schools under CEP compared to eligible but non-participating schools. U.S. Department of Agriculture. (2022). USDA Community Eligibility Provision Characteristics Study, School Year 2016-2017. OMB # 0584-0612, expiration 9/30/2019. Available at: <https://www.fns.usda.gov/cn/usda-cep-characteristics-study-sy-2016-17>.

students' diet quality and academic performance and can reduce social stigma and food insecurity.<sup>5</sup> Researchers have observed that “CEP exposure is associated with an almost five percent decline in households classified as food insecure.”<sup>6</sup> LEAs have also reported that CEP reduces administrative burden and eliminates unpaid meal debt in schools.<sup>7</sup> Lastly, CEP improves Program integrity by simplifying administration and lowering error rates in certifying students.<sup>8,9</sup>

This final rule lowers the minimum ISP from 40 percent to 25 percent and makes conforming changes to ISP-related requirements (i.e., grace year eligibility and identification/notification/publication requirements). Electing CEP is a voluntary decision made by LEAs based on their unique student populations. Prior to participating in CEP, LEA decisionmakers should consider student nutrition, educational, administrative, and financial factors. This rule does not impose any new requirements on LEAs or schools. Through this final rule an increased number of LEAs, schools, and groups of schools will be eligible to offer all students lunches and breakfasts at no-cost when it is financially viable. This final rule supports State and local choices to expand the availability of no-cost school meals for all students through programs supported by State or local funding.

USDA solicited public comments on the proposed change to lower the minimum ISP to 25 percent. In addition, USDA requested public comments on the following questions:

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<sup>5</sup> Cohen JFW, Hecht AA, McLoughlin GM, Turner L, Schwartz MB. Universal School Meals and Associations with Student Participation, Attendance, Academic Performance, Diet Quality, Food Security, and Body Mass Index: A Systematic Review. *Nutrients*. 2021 Mar 11;13(3):911. Diet quality and food security (pp. 6-9); Academic performance (p. 10). Available at: <https://pubmed.ncbi.nlm.nih.gov/33799780/>.

<sup>6</sup> National Bureau of Economics. (2022). The Effect of Free School Meals on Household Food Purchases: Evidence from the Community Eligibility Provision. Available at: <https://www.nber.org/papers/w29395>. “CEP exposure” is the probability that a household has a child enrolled at a CEP school, based on schools’ CEP participation, household zip codes, and school attendance areas.

<sup>7</sup> U.S. Department of Agriculture. (2022). USDA Community Eligibility Provision Characteristics Study, School Year 2016-2017. OMB # 0584-0612, expiration 9/30/2019. Available at <https://www.fns.usda.gov/cn/usda-cep-characteristics-study-sy-2016-17> (p. 43).

<sup>8</sup> U.S. Department of Agriculture. (2014). Community Eligibility Provision Evaluation Final Report. Available at: <http://www.fns.usda.gov/sites/default/files/CEPEvaluation.pdf> (p. 127-135).

<sup>9</sup> Milfort et al. (2021). Third Access, Participation, Eligibility, and Certification Study. Prepared by Westat, Inc., Contract No. AG-3198-K-15-0054. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Conor McGovern. Available online at: <https://fns-prod.azureedge.us/sites/default/files/resource-files/APECI-III-Vol1.pdf> (p.8-14 through 9-3).

- (1) To what extent are LEAs that would be newly eligible under this proposed rule expected to elect CEP?
- (2) What sources of non-Federal funds are available to support LEAs electing CEP at lower ISPs?
- (3) In a typical year, how much time do LEAs spend on administrative duties that may be eliminated by electing CEP (e.g., processing applications, managing unpaid meal charges, conducting verification)? What administrative activities are included in that estimate?
- (4) To what extent are administrative cost savings a factor in determining whether to elect CEP?
- (5) How do State policies related to offering free school meals for all students influence the likelihood of CEP election among newly eligible LEAs?

Public comments received in response to the proposed rule helped inform the development of this final rule.

## **II. Public Comments and USDA Response**

During the 45-day comment period (March 23-May 8, 2023), USDA received a total of 10,625 comments, including 849 unique submissions and four form letters representing 8,689 submissions. Of the 10,625 comments, 1,087 were duplicate or non-germane submissions, resulting in 9,538 relevant comments. All comments, except non-germane comments, are posted online at [www.regulations.gov](http://www.regulations.gov) (see docket FNS-2022-0044, *Child Nutrition Programs: Community Eligibility Provision-Increasing Options for Schools*). Relevant comments were submitted by Members of Congress, State and local government entities and elected officials, school districts and school staff, advocacy organizations, nongovernmental organizations, and other stakeholders, including food banks, healthcare and health insurance organizations and healthcare professionals, professional and trade associations, the research community, faith-based organizations, and individual commenters and members of the public. USDA greatly

appreciates the thoughtful comments provided. These comments were essential to the development of this final rule.

Overall, including the form letters, almost 97 percent of comments supported the proposed rule (9,220 of 9,538) and less than 1 percent opposed it (14 of 9,538); the remaining comments were mixed, offered conditional support, or were neutral, in that they were generally supportive of lowering the minimum ISP to 25 percent, but also discussed additional considerations for school meals and school nutrition departments.

Comments in favor of lowering the minimum ISP to 25 percent cited benefits to children, families, schools, communities, and Program operators. Supporters noted that lowering the minimum ISP would increase student access to school meals and improve children's food security, health, and academic performance. Many comments also supported the proposal for its administrative benefits to school districts and schools.

Comments opposed to lowering the minimum ISP primarily focused on concerns about school finances and funding to support CEP or argued that the proposed 25 percent threshold was chosen arbitrarily and could expand CEP to schools serving communities that do not need assistance.

Comments offering mixed or conditional support generally agreed with lowering the threshold, but also urged USDA to take additional measures to support and expand CEP (e.g., increase the CEP multiplier or make school meals available at no cost to students nationwide). The following discussion is a detailed summary of public comments by topic.

## **Minimum ISP**

### *Proposed Change*

Under current regulations, the minimum ISP required to elect CEP is 40 percent; therefore, to be eligible for CEP, an LEA, group of schools, or school must have an ISP greater than, or equal to, 40 percent ( $ISP \geq 40$  percent) as of April 1 of the school year prior to implementing CEP (7 CFR 245.9(f)(3)(i)). USDA proposed to amend 7 CFR 245.9(f)(3)(i) to

require an LEA, group of schools, or school to have an ISP of at least 25 percent, as of April 1 of the prior school year, to participate in CEP. Individual schools participating in CEP as part of a group would be permitted to have an ISP lower than 25 percent, provided that the group's aggregate ISP is at least 25 percent.

### *Public Comments*

USDA received 9,220 comments that were generally supportive of lowering the minimum ISP threshold to 25 percent. Commenters supporting the lower threshold included: Members of Congress; State and local agencies; school districts and school staff; advocacy groups, trade associations, and individuals. Many commenters reasoned that the proposed change would expand CEP, allowing more students access to free, nourishing school meals. Further, commenters highlighted that expanding CEP could benefit numerous stakeholders by reducing hunger and food insecurity, improving students' academic performance, increasing equity, reducing families' financial burdens, and streamlining school meal operations.

Many commenters who supported the rule discussed the importance of feeding schoolchildren equitably and supporting families. Numerous commenters, including advocacy groups, a food bank, trade associations, and individuals, noted that access to nutritious school meals is important to ensure educational equity, improve learning outcomes, and advance children's intellectual and physical development. Some individual commenters asserted that student hunger has a significant impact on academic performance and outcomes. A form letter campaign emphasized that hungry schoolchildren cannot learn effectively, and that CEP helps to alleviate the negative impact of hunger on learning. Several commenters, including an advocacy group and individuals, expressed support for the proposed rule because, for many children, school meals are the only nutritious meals they have access to each day. Similarly, an advocacy group commented that CEP helps feed schoolchildren, while also increasing attendance and improving academic outcomes. Another advocacy group asserted that, without CEP, thousands of students would go hungry at school. One advocacy group cited research which found that

universal school meals improved academic performance, reduced suspension among students, reduced household spending on groceries, and improved dietary quality at home. Similarly, some commenters, including a trade association and individuals, stated that lowering the minimum ISP would decrease children's and families' food insecurity.

School staff and a few individual commenters said that lowering the minimum ISP to 25 percent would benefit their school districts because they are unable to participate in CEP at the 40 percent threshold, but they know students in their communities experience widespread food insecurity. A school district reported that 69 percent of their students receive free and reduced price meals, but only three of 18 schools in the district qualify for CEP (two of which barely meet the 40 percent threshold). Further, commenters, including a school board, suggested that lowering the minimum ISP would improve communities' attitudes toward school meals and school nutrition programs.

A couple of commenters, including a State and a local agency, noted that reducing the minimum ISP increases access and makes school meals more equitable among rural, Tribal, and underserved communities. Many commenters discussed the historical disadvantages, particularly food insecurity, faced by rural and underserved communities. For example, an advocacy group emphasized that "Black and Brown communities experience food insecurity at higher rates" than their White counterparts due to systemic racial injustice. Some commenters reasoned that CEP has been useful in minimizing these disadvantages through access to free meals, especially among Latino and Black children. Additionally, a few commenters with first-hand CEP experience, including a school and an advocacy group, stated that when meals were available at no cost to all students, significantly more students opted to participate in school meals and the school culture improved. Notably, a form letter campaign said that expanding access to CEP is a "great step forward" to improve equity, accessibility, and nutrition in school meals.

Many commenters, including a State agency, an advocacy group, a professional association, and individuals, stated that CEP helps reduce the prevalence of unpaid meal debt,

and some commenters, including a school and individual commenters, cited the elimination of unpaid meal charges and student meal debt as a primary reason they support lowering the minimum ISP. Many commenters, including a local government, school districts, a trade association, individuals, and a form letter campaign, expressed support for decreasing the minimum ISP, as it would provide “peace of mind” to parents and children by eliminating the cost of school meals.

Commenters also support lowering the minimum ISP because it reduces administrative burden and gives school districts more options for operating school meal programs to best serve their communities. Several commenters, including a State agency and local agency, school districts and schools, a trade association and an individual, supported lowering the minimum ISP because it would significantly reduce administrative burden. A couple of State agencies said that the proposed change would help their States’ small and rural schools, which serve many critical roles for isolated, rural communities and often struggle with higher per-meal administrative costs because of their small size. Commenters also recognized that expanding CEP would help schools and school nutrition staff operate the SBP and NSLP more efficiently and would allow them to focus more on local purchasing, farm-to-school initiatives, and scratch cooking. Additionally, many commenters, including a local agency, schools and school staff, advocacy groups, a trade association, and individuals, expressed support for the proposal because lowering the minimum ISP would give schools greater flexibility in operational decisions, in addition to providing more enrolled students with no-cost meals.

While still supportive, commenters discussed how funding to operate school meal programs via CEP at the proposed 25 percent minimum ISP would be challenging. Several commenters asserted that the proposed lower minimum ISP will not be financially viable for many school districts without a concurrent increase in the CEP multiplier. A few commenters suggested that to offset the burden of costs, USDA should allow statewide CEP participation so

that CEP administration and any costs can be shared among school districts within a State and are not placed on individual school districts.

In addition, several supportive commenters expressed concerns about the loss of free and reduced price eligibility data — frequently used for education funding — that occurs in CEP schools when applications are eliminated. For example, an advocacy group commented that schools that do not process school meal applications will need to navigate how to adjust policies that previously relied on household application data but reasoned that this is true at any ISP level. Other commenters recommended that USDA work with other Federal partners to assess alternative poverty measures.

Despite overwhelming support for lowering the minimum ISP to 25 percent, approximately 300 commenters, including a State agency, advocacy groups, and individuals, provided mixed feedback or conditional support. Many noted that successful implementation of CEP in schools with lower ISPs requires additional funding. A school staff commenter expressed concern that the proposed change to CEP would lead communities and school boards to believe it is financially viable for districts with a 25 percent ISP to elect CEP. Some commenters suggested increasing the CEP multiplier, while others thought the rule did not go far enough, suggesting further lowering the minimum ISP, eliminating the minimum ISP completely in States where there is identified State funding to support CEP, and providing universal school meals at no cost to all students nationwide.

Though most commenters supported lowering the minimum ISP to 25 percent, 14 commenters expressed opposition to the proposed change. Many commenters opposed to lowering the minimum ISP expressed concern that expanding CEP might financially burden schools and school nutrition programs in cases where Federal reimbursements fall short of Program operating costs. Of these, about half expressed that the proposed lower minimum ISP would not be financially viable without increasing the CEP multiplier. Opposing commenters, including a school district and individual commenters, remarked that the proposed change would

not encourage more schools to implement CEP because of its economic infeasibility. Similar to commenters with mixed feedback on the rule, a school district asserted that the CEP multiplier needs to be increased from 1.6 to at least 2.0 or higher. The district added that lowering the minimum ISP, without increasing the multiplier, would only assist schools that have the financial means to help pay the “nutrition bills.” An individual commenter expressed concern that the lower minimum ISP would not simplify determinations for severe need payments in the SBP or allow more schools to participate in CEP. The commenter concluded by expressing concern that the 25 percent minimum ISP was chosen arbitrarily. One commenter expressed concern about government overreach and suggested that State and local agencies are better suited to address free meals. Another individual stated that the proposed rule promotes socialism, adding that social services should be involved to provide meals while simultaneously assessing students’ home environments. Finally, a school nutrition director stated that expanding CEP to a student population that does not have an economic need is not an efficient use of funds, and an advocacy group asserted that lowering the minimum ISP significantly expands CEP in a way that is inconsistent with the intent of the Federal meal programs because it could result in more middle- and upper-income students receiving taxpayer-funded meals.

Thirty commenters responded to the question, “to what extent are LEAs that would be newly eligible under this proposed rule expected to elect CEP?” Of these, the majority provided estimates of the number of schools expected to be newly eligible. Some commenters shared that, although more schools would be eligible, they would likely not elect CEP without an increase to the CEP multiplier. Other commenters responded that newly eligible schools in their States would elect CEP due to the availability of State funding to cover any costs that exceed Federal assistance. One State agency did not indicate how many more schools would participate in CEP, but expressed concern that many newly eligible schools may not initially understand the financial impacts of electing CEP at a lower ISP threshold.

Additionally, approximately 15 commenters responded to the question, “what sources of non-Federal funds are available to support LEAs electing CEP at lower ISPs?” The majority of commenters responding to this question indicated there is State or local funding available to help cover costs. A State agency said that non-Federal sources in their State include angel funds (local or community donations). Another State reported there are no State funds available to pay for the cost of meals not covered by Federal assistance. Finally, an advocacy group emphasized that, for their area, the availability of State and local funds varies greatly based on school-level factors, such as enrollment and student participation in school meal programs.

### *USDA Response*

USDA concurs with commenters who stated that lowering the minimum ISP is expected to significantly benefit students, families, schools, and communities. USDA’s CEP Characteristics Study found that LEAs participating in CEP reported multiple perceived benefits, including increased student participation, decreased financial burden on families, elimination of unpaid meal debt, reduced administrative burden, and decreased stigma for students in need.<sup>10</sup> USDA also understands that lowering the minimum ISP to 25 percent is expected to result in more schools being eligible for CEP; yet, without additional State or local funding, electing CEP at lower ISPs may not be financially viable for many schools.

Non-CEP LEAs and schools that serve high proportions of low-income children are expending already-constrained resources to collect and process school meal applications to ensure low-income students have access to free or reduced price meals. Lowering the minimum ISP to 25 percent provides an opportunity for more LEAs with high proportions of low-income students — especially those with non-Federal funds available to support school meals — to capitalize on CEP’s administrative and operational benefits, while maintaining CEP’s intent to

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<sup>10</sup> U.S. Department of Agriculture. (2022). USDA Community Eligibility Provision Characteristics Study, School Year 2016-2017. OMB # 0584-0612, expiration 9/30/2019. Available at <https://www.fns.usda.gov/cn/usda-cep-characteristics-study-sy-2016-17>

provide schools serving high poverty areas with opportunity to offer healthy, no-cost school meals to all students. This is particularly applicable to LEAs and schools in States with healthy school meals for all initiatives; in these States, students already have access to meals at no cost and now the lower minimum ISP will allow more schools to experience the administrative and operational benefits of CEP.

Healthy school meals for all initiatives, supported by State funding, are gaining momentum across the nation. Currently, eight States have permanent policies in place, more than 20 States are actively pursuing healthy school meals for all legislation, and 63 percent of voters nationwide support legislation that would make school meals permanently available to all students at no cost.<sup>11</sup> These initiatives align with USDA's priority to tackle food and nutrition insecurity: USDA is leveraging all resources to ensure consistent and equitable access to healthy, safe, affordable foods essential to optimal health and well-being.<sup>12</sup> Expanding schools' access to CEP — and providing students access to a nourishing breakfast and lunch each school day — is an important action USDA can take to support those efforts.

USDA acknowledges that lowering the minimum ISP is not accompanied by additional funding and that, for the most part, school districts and schools that are newly eligible under the 25 percent threshold may need additional non-Federal funds for CEP to be financially viable. However, USDA supports CEP expansion in States and localities where non-Federal funding is available to support healthy school meals at no charge for all students.

As detailed earlier, the CEP multiplier is used to calculate the percentage of breakfasts and lunches to be claimed and reimbursed at the Federal free rate at CEP schools. Section 11(a)(1)(F)(vii)(II) of the NSLA provides the Secretary the option to establish the CEP multiplier between 1.3 and 1.6. Accordingly, USDA established 1.6 as the multiplier to be used to

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<sup>11</sup> Food Research and Action Center, Healthy School Meals for All Website. Available at: <https://frac.org/healthy-school-meals-for-all>.

<sup>12</sup> U.S. Department of Agriculture, Priorities Website. Available at: <https://www.usda.gov/priorities#:~:text=Tackling%20Food%20and%20Nutrition%20Insecurity,-At%20USDA%2C%20we>.

determine CEP claiming percentages for an entire 4-year CEP cycle (7 CFR 245.9(f)(4)(vi)). Increasing the multiplier to provide more funding to CEP schools (in the form of a higher free claiming percentage) would require Congressional action; USDA does not have statutory authority to increase the multiplier any further. Similarly, USDA does not have the authority to allow a statewide CEP option. Section 11(a)(1)(F)(x) of the NSLA requires CEP to be elected at the LEA-level.

Electing CEP is a local decision, not a Federal mandate; as a result, the financial viability of participating in CEP must be evaluated based on the unique circumstances of each individual school district. If the total amount of Federal assistance available does not fully cover the cost of offering all students meals at no charge, LEAs must contribute non-Federal funds (7 CFR 245.9(f)(4)(vii)). The use of non-Federal funds is not required if all operating costs are covered by the Federal reimbursement and other assistance provided under the NSLA and the Child Nutrition Act of 1966 (42 U.S.C. 1759a (a)(1)(F)(ii)(I)(bb)). Additionally, school food authorities (SFAs) may use excess funds in the non-profit school food service account to support CEP (7 CFR 210.14(a)).

When deciding whether to elect CEP, eligible schools must consider their ability to provide meals at no cost and cover their operating costs with Federal assistance and any other available funds, including State and/or local funds. USDA has an updated estimator tool to help LEAs determine if CEP is financially viable, and to help assess LEA groupings to optimize Federal reimbursements. The estimator tool is available at the CEP Resource Center (<https://www.fns.usda.gov/cn/community-eligibility-provision-resource-center>).

With respect to concerns regarding the loss of free and reduced price eligibility data, USDA understands that many entities have historically relied on data from free and reduced price school meal applications as a school- or school district-based poverty measure and/or means of allocating education funding. Since CEP's inception in 2011, USDA has worked extensively to ensure that State agencies and eligible LEAs are aware of alternative means of

assessing socioeconomic status. USDA has coordinated meetings and webinars to share best practices related to assessing socioeconomic status in the absence of household applications.<sup>13</sup> In addition, USDA worked with the National Forum on Education Statistics to develop a guide on alternative measures of socioeconomic status for use in education data systems.<sup>14</sup> USDA continues to work with the U.S. Department of Education's National Center for Education Statistics, on an ongoing basis, to discuss and identify school-based poverty measures that have potential to serve as alternatives to free and reduced price application data. USDA encourages stakeholders at the State and local levels to pursue similar conversations to ensure that electing CEP, and the loss of application data, does not result in reduced education funding or benefits to CEP school districts, schools, or students.

USDA has discretion to establish a minimum ISP that is lower than 40 percent (42 U.S.C. 1759a(a)(1)(F)(viii)(II)). In addition to public comments, to determine an appropriate threshold, USDA considered operational factors, including characteristics of LEAs currently eligible and near eligible to elect CEP, and analyzed the composition of the ISP and the proportion of free and reduced price students at varying ISP levels. Based on these analyses, a minimum ISP of 25 percent results in at least 40 percent of meals reimbursed at the free rate (25 percent x 1.6 = 40 percent). Schools where at least 40 percent of the lunches served to students in the second preceding school year were free or reduced price qualify as severe need schools and receive an additional reimbursement (42 U.S.C. 1773(d)(1)(A); 7 CFR 220.9(d)(2)). Aligning the CEP threshold with the severe need payments threshold provides consistency because all CEP-eligible schools will qualify for severe need reimbursements. In addition, CEP's positive impact on school breakfast participation further supports the SBP.<sup>15</sup>

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<sup>13</sup> Visit the CEP Resource Center for more information: Community Eligibility Provision Resource Center | Food and Nutrition Service ([usda.gov](https://www.usda.gov)).

<sup>14</sup> National Forum on Education Statistics (2015). *Forum Guide to Alternative Measures of Socioeconomic Status in Education Data Systems* (NFES 2015-158). U.S. Department of Education. Washington, DC: National Center for Education Statistics. Available at: <http://nces.ed.gov/pubs2015/2015158.pdf>.

<sup>15</sup> USDA's CEP Characteristics Study found that SBP participation increased by about 12 percent in LEAs operating CEP (compared to similar, eligible LEAs that did not elect CEP). U.S. Department of Agriculture (2022). USDA

Given the broad stakeholder support for lowering the minimum ISP to 25 percent — and the potential benefit to children, families, schools, and communities — USDA is adopting the lower, 25 percent minimum ISP in this final rule. Accordingly, this final rule amends the CEP provisions at 7 CFR 245.9(f)(3)(i) to reflect a 25 percent minimum ISP.

## **Conforming Amendments to Grace Year and Identification/ Notification Requirements**

### *Proposed Change*

To conform with the proposed 25 percent ISP threshold in 7 CFR 245.9(f)(3), USDA proposed to amend 7 CFR 245.9(f)(4)(ix), the regulations governing grace years, to allow an LEA, group of schools, or school in the fourth year of the 4-year CEP cycle with an ISP of less than 25 percent but equal to or greater than 15 percent (as of April 1 of the fourth year of a CEP cycle) to continue using CEP for an additional “fifth year” or a “grace year” beyond the 4-year CEP cycle. In addition, USDA proposed to amend 7 CFR 245.9(f)(5) and (6), the regulations governing LEA and State agency identification and notification requirements, and 7 CFR 245.9(f)(7)(i) and (ii), the regulations governing State agency public notification requirements. USDA only proposed changes to the numbers (i.e., 40 percent to 25 percent, 30 percent to 15 percent) consistent with the proposed lower threshold and statutory requirements (42 U.S.C. 1759a(a)(1)(F)(v)(I), (a)(1)(F)(x)); no additional substantive changes were proposed.

### *Public Comments*

USDA received eight comments pertaining to these conforming changes and all comments were supportive. A State agency noted that the grace year flexibility would allow schools an extra year to attempt to meet the 25 percent ISP threshold to remain on CEP. In addition, an advocacy group suggested that USDA should require States to use the actual counts

of identified students as opposed to proxy data to ensure more accurate lists and notifications.

### *USDA Response*

USDA appreciates one commenter's suggestion to change requirements related to the data that States use for notification purposes. However, this rulemaking only changes the numbers (e.g., 40 percent to 25 percent, 30 percent to 15 percent) consistent with the lower ISP threshold and statutory requirements (42 U.S.C. 1759a(a)(1)(F)(v)(I), (a)(1)(F)(x)); no additional substantive changes are made by this rulemaking. Therefore, under this final rule, USDA will continue to allow States to use proxy data for CEP notification purposes. Consistent with current requirements, actual counts of identified students must be used for CEP elections.

Given the support for these changes and the statutory requirement that these provisions conform to the final threshold, this final rule modifies the following regulations to align with the 25 percent ISP threshold in 7 CFR 245.9(f)(3):

- 7 CFR 245.9(f)(4)(ix), the regulations governing the use of CEP for a grace year;
- 7 CFR 245.9(f)(5) and (6), the regulations governing LEA and State agency identification and notification requirements; and
- 7 CFR 245.9(f)(7)(i) and (ii), the regulations governing State agency public notification requirements.

## **Comments on Other CEP-Related Items**

### ***Healthy School Meals for All***

#### *Public Comments*

Approximately 330 commenters discussed healthy school meals for all initiatives; many of those commenters, including a professional association and individuals, expressed general support for providing all students with no-cost, healthy school meals. Several commenters, including a trade association and a form letter campaign, stated that the proposed rule is an improvement on existing CEP requirements and represents a positive step toward universal, no-

cost meals for all students. A form letter campaign applauded the proposed CEP expansion and its potential to enable more schools and districts across the country to provide school meals at no charge to all students, closing a gap in healthy food access for many children and families, especially those in need. However, some commenters, including school staff, advocacy groups, and individuals, noted that a nationwide program making school meals available at no charge for all students would be preferable over lowering the minimum ISP.

Several commenters highlighted that the proposed change to CEP would support the growing number of States choosing to invest funding to provide no-cost school meals to all children. A few commenters, including a school district and individuals, commented that lowering the minimum ISP to 25 percent would give States and schools greater flexibility to choose to invest non-Federal funds to offer no-cost meals to all enrolled students. An individual representing a non-profit organization stated that the proposed change creates an “easier entry point” for States to adopt their own universal, no-cost meals policies in a more balanced and sustainable way. The commenter continued, declaring that a lower minimum ISP would support the growing number of States that are choosing to invest their own funds to provide free school meals to all students, through maximizing LEA use of CEP in combination with State-specific initiatives. Conversely, one State agency shared that, in their State, State funding is not available to encourage lower ISP schools to adopt CEP, and concerns exist regarding whether some schools have sufficient financial support to be able to implement CEP at lower ISPs.

Approximately 15 commenters responded to the question, “how do State policies related to offering free school meals for all students influence the likelihood of CEP election among newly eligible LEAs?” A couple of commenters stated that the proposed rule provides more options to LEAs and State agencies in those States that incentivize CEP adoption through State legislation. Some commenters, including State agencies and advocacy groups, asserted that LEAs in States with existing healthy school meals for all legislation, or significant non-Federal funding sources, will see an increase in CEP participation because they do not have to reconcile

significant budgetary gaps. One State agency commented that the State’s policies neither require nor discourage districts to participate in CEP, and another State agency noted that LEAs will need to assess how current application-based reimbursements compare to CEP’s direct certification-based reimbursements because eliminating applications may affect school districts and States differently, depending on their policies. Additionally, one State agency asserted that without State funding to support free school meal programs, newly eligible LEAs would not be likely to participate in CEP because it would not be financially viable.

#### *USDA Response*

USDA anticipates that LEAs most likely to elect CEP at the 25 percent ISP are those in States that have committed to offering healthy school meals for all through State funding. Numerous public comments submitted by States support this assumption. The Colorado Department of Education confirmed that, to opt-in to the State’s Healthy School Meals for All Program and receive additional State funding, qualifying schools are required to elect CEP. In its comment, the Minnesota Department of Education noted that, while the State will not require school districts to participate in CEP under the recently passed Minnesota Free School Meals Program, it anticipates “schools will be interested in adopting CEP at a lower threshold to have the option to streamline meal counting and claiming.” A recent publication from the Food Research and Action Center has also found that States offering free meals to all students in school year (SY) 2022-23 experienced significant increases in CEP uptake.<sup>16</sup>

USDA estimates that as many as 2,090 schools in 471 LEAs across California, Colorado, Maine, Minnesota, and New Mexico, all of which have implemented healthy school meals for all policies for SY 2023-24, would elect to participate in CEP under the 25 percent ISP.<sup>17</sup> Estimates are based on the School Food Authority Verification Collection Report, found at:

<https://www.fns.usda.gov/form/school-food-authority-sfa-verification-collection-report>.

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<sup>16</sup> Food Research & Action Center. Community Eligibility: The Key to Hunger-Free Schools, School Year 2022-23 (May 2023). Available at: <https://frac.org/wp-content/uploads/cep-report-2023.pdf>.

<sup>17</sup> USDA only included States with permanent legislation at the time of the analysis.

Specifically, the analysis used 2023 data related to student enrollment, direct certification, free and reduced price claiming percentages, and CEP participation status.<sup>18</sup>

A recent report on CEP uptake showed that the number of students in schools participating in CEP has increased annually since 2014, with the greatest increases occurring more recently.<sup>19</sup> In SY 2021-22, there were 16.2 million students in CEP schools; in SY 2022-23, there were 19.9 million. California was the greatest contributor, adding more than 1.3 million students to the total enrolled in CEP schools. The percentage of eligible schools adopting CEP also increased from 75.3 percent to 99.5 percent in California during this time. In all but one of the seven States offering free meals to all students during SY 2022-23 through State funding (California, Connecticut, Maine, Nevada, New Mexico, Vermont), the percentage of eligible schools participating in CEP was 92 percent or higher. The percentage of participating eligible CEP schools in Massachusetts, the remaining State, was 87 percent. High CEP participation rates in States providing free school meals to all students is consistent with the feedback submitted in public comments and supports USDA's assumption that school districts in these States are most likely to benefit from, and take advantage of, the 25 percent ISP.

USDA is fully committed to ensuring all children have access to healthy school meals. Lowering the minimum ISP provides States and LEAs greater flexibility to combine CEP with State initiatives to simplify Program administration, reduce burden, and offer meals to all students at no charge.

## ***Costs & Cost Savings***

### *Public Comments*

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<sup>18</sup> Data from FNS-742: School Food Authority Verification Collection Report, available at: <https://www.fns.usda.gov/form/school-food-authority-sfa-verification-collection-report>.

<sup>19</sup> Community Eligibility: The Key to Hunger-Free Schools (School Year 2022-2023). May 2023. Food Research and Action Center. Available at: <https://frac.org/cep-report-2023>.

LEAs assume significant responsibility to administer school meal programs and, in response to the proposed rule, respondents submitted several comments and questions related to costs and cost savings. One advocacy group stated that reducing the minimum ISP—even to zero—will not appreciably drive up Federal costs because reimbursements are tied to the ISP, and that schools or districts with lower ISPs will receive lower Federal reimbursements and will have to cover remaining costs with non-Federal funds. Another advocacy group commented that the lower minimum ISP would result in additional government spending annually.

Numerous commenters stated that, in general, CEP helps reduce administrative costs. Many commenters, including Members of Congress, a State agency, a local government, school districts, advocacy groups, and form letter campaigns, said that CEP helps reduce administrative and paperwork costs, and streamlines Program operations for LEAs and schools. Some commenters, including advocacy groups and a form letter campaign, added that administrative cost savings allow school officials to focus resources on core SBP and NSLP mission-oriented tasks, such as planning and preparing healthy meals for students. Similarly, some commenters, including State and local agencies, advocacy groups, and a trade association, remarked that the reduced administrative burden from CEP helps schools focus on investing in operations and meal program improvements, such as scratch cooking or farm-to-school programs. One staff member of a public charter school noted that if the school were eligible for CEP, the school would save a minimum of \$50,000 per year in administrative staff costs. Commenters remarked that CEP reduces costs for schools because, as a result of increased student participation, it leverages economies of scale in food purchasing and preparation. An advocacy group and a trade association concluded that administrative savings resulting from CEP help schools combat rising food prices, focus on serving quality meals, and invest in school nutrition programs. Furthermore, a State explained that by reducing administrative costs, CEP helps ensure a greater share of each meal reimbursement is spent directly on food and food preparation. Some commenters, including an advocacy group and a trade association, asserted that lowering the

minimum ISP would reduce State costs associated with expanding school meal access and would help sustain recently enacted healthy school meals for all programs, if State fiscal conditions change.

An advocacy group suggested that schools with higher ISPs can adopt CEP without relying on non-Federal funds because administrative savings often offset the loss of revenue from student payments but recognized that may not be the case for districts with lower ISPs. Another advocacy group stated that expansion of CEP will pay for itself by reducing administrative burden and increasing Program efficiency. A school district warned that access to CEP may not reduce paperwork as much as expected because paperwork will still be required for other Federal programs.

Six commenters responded to the question: “In a typical year, how much time do LEAs spend on administrative duties that may be eliminated by electing CEP (e.g., processing applications, managing unpaid meal charges, conducting verification)? What administrative activities are included in that estimate?” Two State agencies commented generally that CEP would reduce LEAs’ time spent on processing applications and verification activities. In addition, two State agencies acknowledged that the time spent on applications varies by school district size, with one estimating the number of hours would vary from as few as 12 hours per school year to almost 50 percent of a full-time equivalent. One school district reported that hundreds of hours of work are spent each year processing free and reduced price applications, including dealing with unpaid meal debt and other activities. Similarly, another school district estimated that 490 hours per year are dedicated to the application process. One school district reported that, after adopting CEP at several (but not all) schools, time spent on processing applications was cut “nearly in half.”

Six commenters responded to the question, “to what extent are administrative cost savings a factor in determining whether to elect CEP?” Some of the commenters stated that administrative cost savings were a determining factor, while others depended more on cafeteria

operations or the capacity to serve no-cost meals as a primary factor in deciding to elect CEP.

### *USDA Response*

USDA analyzed administrative data and relied on information from public comments and stakeholder engagement, to examine the economic impacts (i.e., costs) of lowering the minimum ISP to 25 percent. Historically, CEP has not been a significant driver of Federal costs. CEP became available nationwide in SY 2014-15; during that school year and in subsequent school years, the number of schools electing CEP – and, as a result, students in CEP schools – grew significantly. However, since the CEP multiplier is designed to, on average, mirror the free and reduced price percentage, claiming meals merely shifted from free and reduced price-based claiming to ISP-based claiming with no significant impact on Federal costs.

The number of students in CEP schools more than doubled, from 6.5 million in SY 2014-2015 to 13.7 million in SY 2018-2019. During this same time period, the annual growth rate in school meal earnings (i.e., costs) was about 3 percent.<sup>20</sup> Most of the annual growth was due to an annual inflation rate of 2.2 to 3 percent during this period. USDA anticipates that CEP uptake as a result of the 25 percent minimum ISP will be significantly smaller than typical, historical year-over-year CEP increases due to the financial considerations LEAs must weigh when deciding to elect CEP at lower ISPs. Therefore, based on these analyses, USDA does not agree with the commenter that indicated there would be large increases in Federal Government spending from this CEP expansion.

The decision to elect CEP is the result of a cost-benefit analysis specific to eligible LEAs. State initiatives, such as healthy school meals for all, make it easier for LEAs to elect CEP due to the additional State funding. Administrative cost savings associated with CEP are a significant

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<sup>20</sup> USDA limited its analysis to fiscal year (FY) 2015-FY 2019 due to the impacts of nationwide child nutrition waivers, which were provided to ensure access to meals through the Child Nutrition Programs as communities responded to the COVID-19 pandemic. Cash payments for NSLP and SBP were \$15.6 billion in FY 2015 and \$17.4 billion in FY 2019.

factor that may make CEP economically viable for many LEAs, as indicated in several comments.

USDA estimates administrative cost savings of \$103,869, based on a total annual reduction of 5,679 burden hours and a \$18.29 median hourly rate for Office and Administrative Support Occupations in Educational Services.<sup>21</sup> Actual decreases in administrative burden will vary by LEA based on factors such as student enrollment, current percentage of students eligible for free and reduced price meals, local wage rates, and current mode of operation before electing CEP (e.g., Provision 2 or 3). Though some commenters indicated that systems may need to be updated or reprogrammed to accommodate the new minimum ISP for CEP, USDA expects that these costs would be limited to one-time, system modification costs.

USDA understands that newly eligible school districts and schools may have questions about implementing CEP at a lower ISP. USDA plans to issue guidance related to the lower minimum ISP to help LEAs and schools make informed decisions about electing CEP. USDA, in collaboration with Federal and State agency partners, stands ready to provide support, customer service, and technical assistance to school districts interested in electing CEP at all eligibility levels.

## **Procedural Matters**

### ***Executive Orders 12866 and 13563***

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and

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<sup>21</sup> For a full discussion of the impacts of this final rule on information collection requirements, please refer to the Paperwork Reduction Act section.

of promoting flexibility. This final rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

### ***Regulatory Impact Analysis***

This final rule has been designated as not significant by the Office of Management and Budget. Therefore, no Regulatory Impact Analysis is required.

### ***Regulatory Flexibility Act***

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this final rule would not have a significant impact on a substantial number of small entities. The provisions of this final rule are intended to reflect the operational needs of LEAs of all sizes. No specific additional burdens are placed on small LEAs seeking to operate CEP.

USDA's 2022 CEP Characteristics Study found that 36 percent of LEAs participating in CEP in SY 2016-17 were single-school LEAs; 32 percent of participating LEAs were in rural areas; and 83 percent served fewer than 5,000 students.<sup>22</sup> For smaller LEAs, the decision to elect CEP may be a simpler process and/or involve gaining approvals from fewer governing bodies.

Additionally, CEP is an optional provision, and there is no requirement for LEAs to participate.

Currently, many small LEAs participate in CEP; in SY 2016-17, 1,939 of the 4,263 school districts (45 percent) electing CEP had enrollments of 999 or less.<sup>23</sup>

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<sup>22</sup> U.S. Department of Agriculture (2022). USDA Community Eligibility Provision Characteristics Study, School Year 2016-2017. OMB # 0584-0612, expiration 9/30/2019. Available at <https://www.fns.usda.gov/cn/usda-cep-characteristics-study-sy-2016-17>.

<sup>23</sup> Ibid.

### ***Unfunded Mandates Reform Act***

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA) established requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, and the private sector. Under section 202 of UMRA, USDA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, or Tribal governments in the aggregate, or to the private sector, of \$146 million or more (when adjusted for inflation; gross domestic product (GDP) deflator source: Table 1.1.9 at <https://www.bea.gov/iTable>) in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires USDA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of URMA) for State, local and Tribal governments, or the private sector, of \$146 million or more in any one year. Therefore, this final rule is not subject to the requirements of sections 202 and 205 of UMRA.

### ***Executive Order 12372***

The NSLP and SBP are assigned Assistance Listing Numbers – NSLP (10.555) and SBP (10.553) – and are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (see 2 CFR chapter IV).<sup>24</sup> Since the child nutrition programs are State-administered, USDA’s FNS Regional Offices have formal and informal discussions with State and local officials, including representatives of Indian Tribal

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<sup>24</sup> Assistance listings are detailed public descriptions of Federal programs that provide grants, loans, scholarships, insurance, and other types of assistance awards. More information is available at: <https://sam.gov/content/home>.

Organizations, on an ongoing basis regarding program requirements and operations. This provides USDA with the opportunity to receive regular input from program administrators and contributes to the development of feasible program requirements.

### ***Federalism Summary Impact Statement***

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

The Department has determined that this final rule does not have federalism implications. Electing CEP is a local decision, not a Federal mandate, and lowering the minimum ISP from 40 percent to 25 percent does not limit State or local policymaking discretion. Furthermore, this final rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive order, a Federalism summary impact statement is not required.

### ***Executive Order 12988, Civil Justice Reform***

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. However, USDA does not expect significant inconsistencies between this final rule and existing State or local regulations regarding the provision of school food service operations under CEP. This final rule would permit schools to elect CEP if their ISP is greater than or equal to 25 percent. Per statutory requirements outlined in the NSLA, State agencies operating the Federal school meal programs may not bar an eligible LEA from CEP

participation. Additionally, States may not set an eligibility threshold lower than an ISP of 25 percent for participation in CEP. This final rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this final rule or the application of its provisions, all applicable administrative procedures must be exhausted.

### ***Civil Rights Impact Analysis***

USDA has reviewed the final rule, in accordance with Departmental Regulation 4300-004, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the final rule might have on participants on the basis of age, race, color, national origin, sex, and disability. The FNS Civil Rights Division finds that the current mitigation and outreach strategies outlined in the regulations and this Civil Rights Impact Analysis (CRIA) provide ample consideration to participants' ability to participate in the NSLP and SBP. The promulgation of this final rule will expand access to no-cost meals for all enrolled students at participating CEP schools by lowering the minimum participation threshold. As previously outlined, the final rule is likely to impact the growing number of minority students and families attending participating schools that face a greater risk of food insecurity and health disparities by providing sustained nutritious food and reducing families' paperwork burdens. The changes implemented by this final rule are likely to impact participating LEAs and SFAs by providing greater flexibility to offer no-cost meals to students, which would further support eliminating unpaid meal debt, minimizing stigma, streamlining meal service operations, and reducing paperwork for school nutrition staff.

### ***Executive Order 13175: Consultation and Coordination with Indian Tribal Governments***

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions

that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. USDA provides regularly scheduled consultation sessions as a venue for collaborative conversations with Tribal officials or their designees. This rule was discussed during the consultation on May 23, 2023. Tribal members supported this rule and indicated their belief that lowering the minimum ISP will increase access to the program. USDA is unaware of any current Tribal laws that could be in conflict with the final rule.

### ***Paperwork Reduction Act***

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chap. 35; 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collection of information requirements by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB Control Number. This rulemaking expands access to the Community Eligibility Provision (CEP) by lowering the minimum identified student percentage (ISP) participation threshold from 40 percent to 25 percent, which would give States and schools greater flexibility to choose to invest non-Federal funds to offer no-cost meals to all enrolled students. As a result, more students, families, and schools will have an opportunity to experience the benefits of CEP, including access to meals at no cost, eliminating unpaid meal charges, minimizing stigma, reducing paperwork for school nutrition staff and families, and streamlining meal service operations.

In accordance with the PRA, this final rule would revise existing information collection requirements, which are subject to review and approval by the Office of Management and Budget. These existing information collection requirements are currently approved under OMB Control Number 0584-0026, *7 CFR Part 245 - Determining Eligibility for Free & Reduced Price Meals and Free Milk in Schools*, which expired on July 31, 2023 (a renewal of OMB Control

Number 0584-0026 has been submitted to OMB for review). Revisions to the currently approved information collection requirements will result in a decrease in burden on State and local program operators, as well as participating households. To ensure that the review of this final rule does not interfere with the renewal of OMB Control Number 0584-0026, FNS is requesting a new OMB Control Number for the existing information requirements that are impacted by this final rule. Therefore, the provisions outlined in this rule will initially be shown as increases to the information collection inventory. After OMB has approved the information collection requirements submitted in conjunction with the final rule and after the renewal of OMB Control Number 0584-0026 is completed, FNS will merge these requirements and their burden into OMB Control Number 0584-0026. When the two information collection requests are merged, the decrease in burden noted above will be fully captured in OMB Control Number 0584-0026.

In connection to this final rule, USDA published a proposed rule, *Child Nutrition Programs: Community Eligibility Provision-Increasing Options for Schools*, on March 23, 2023, which provided notice to the public of the forthcoming changes to CEP. In addition, a notice for the proposed rule's impact on information collection requirements and their associated burden was embedded in the proposed rule. The proposed rule solicited public comments on the proposed changes to the existing information collection requirements that are being finalized via this final rule. In response to the notice, FNS did not receive any comments specific to the estimated number of respondents or burden hours associated with the collection of information requirements addressed in the PRA section of the proposed rule, yet a few general comments submitted indicated that State agencies may have to update or reprogram systems to accommodate the proposed minimum ISP.

FNS recognizes that State agencies have systems in place that may maintain CEP data, such as ISP data for LEAs under their jurisdiction. Systems may be used to assist program administrators to efficiently meet the collection of information requirements that are impacted by this rulemaking. For example, systems may be used to help State agencies meet the reporting

requirement to inform LEAs of their CEP eligibility status, as well as meet the recordkeeping requirement that requires State agencies to review ISP documentation that is submitted by LEAs (7 CFR 245.9(f)(6) and (f)(4)(ii), respectively). When estimating the burden associated with information collection requirements, FNS takes into consideration the various methods that may be used to meet such requirements, including the use of information technology. FNS did not change the estimated burden associated with meeting CEP information collection requirements in response to the comments received about system updates or reprogramming; however, FNS expects and acknowledges some State agencies may experience a one-time cost associated with system modifications. The estimated cost associated with such modifications is included in the *One Time Annual Cost* subsection below.

The estimated numbers of respondents, responses, and burden hours for the information collection requirements that were included in the March 23, 2023, proposed rule are being revised via this final rule. Revisions are not due to public comments received on the proposed rule; instead, they are based on more recent data that became available after publication of the proposed rule. Using more recent data, FNS re-evaluated the number of schools in States that have committed to offering healthy school meals for all children that would be eligible to elect CEP in accordance with the lowered identified student percentage threshold. FNS also analyzed a recent publication from the Food Research and Action Center that indicated States offering free meals to all students in SY 2022-2023 experienced significant increases in CEP uptake and analyzed trends in CEP participation in recent years. As a result, FNS has obtained more accurate and recent data that better reflects the number of respondents that will comply with the collection of information requirements that are impacted by this final rule. Accordingly, FNS updated the estimated number of respondents, responses, and burden hours associated with the collections of information that are included in this final rule to reflect the most recent and accurate data available.

In addition to updating the estimated number of respondents, responses, and burden hours for the information collection requirements addressed in this rulemaking with the use of more recent data, FNS is making a technical correction to a typographical error that was identified in the proposed rule's PRA section. Specially, the table that represented the reporting requirements impacted by this rulemaking and their associated burden indicated an estimated 628,673 burden hours were currently approved under OMB Control Number 0584-0026. The correct number of burden hours currently approved under OMB Control Number 0584-0026 for the reporting requirements impacted by this rulemaking is approximately 643,824 burden hours. FNS has made the correction in the reporting table below by replacing 628,673 burden hours with 643,824 burden hours for the number of currently approved burden hours associated with the reporting requirements impacted by this rulemaking.

FNS now estimates that this final rule will have an estimated 3,454,060 respondents, 12,064,195 responses, and 624,833 burden hours. This is a decrease of 31,128 respondents, 107,072 responses, and 5,374 burden hours in comparison to the estimations included in the proposed rule.

The burden estimates associated with the collections of information addressed in this final rule are contingent upon OMB approval under the PRA. When the information collection request associated with the final rule is approved, the USDA will publish a separate notice in the Federal Register announcing OMB's approval.

Comments on the information collection requirements addressed in this final rule may be submitted. Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]. Send comments to Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20403, Fax: 202-395-7285, or e-mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). Please also send a copy of your comments to School Meals Policy Division, Food and Nutrition Service, 1320 Braddock Place,

Alexandria, VA 22314. For further information, please contact Wesley Gaddie at wesley.gaddie@usda.gov.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: Community Eligibility Provision: Increasing Options for Schools

Form Number: None

OMB Control Number: 0584-NEW

Expiration Date: Not Yet Determined.

Type of Request: New Collection

Abstract: This is a new information collection that revises the existing information collection request approved under OMB Control Number 0584-0026. Below is a summary of the changes in the final rule and the accompanying reporting and recordkeeping requirements that will impact the burden that program requirements have on state administering agencies, local education agencies (LEAs), and participating households. FNS has updated the number of respondents, responses, and burden hours associated with the collection of information requirements included in the final rule since publication of the proposed rule *Child Nutrition Programs: Community Eligibility Provision-Increasing Options for Schools*, published on March 23, 2023. Revisions are based on more recent and accurate data that became available after the

publication of the proposed rule. In addition, because FNS received comments on the proposed rule indicating that State agencies may experience a one-time cost associated with system modifications, an estimated cost for updating and reprogramming State systems is included in the *One Time Annual Cost* subsection below.

Participating in the CEP is a voluntary decision made by local school districts. To be eligible for CEP under current program regulations, an LEA, group of schools, or school must ensure that at least 40 percent of enrolled students are identified students, participate in both the National School Lunch Program and the School Breakfast Program, and serve lunches and breakfasts to all enrolled students at no charge.

Identified students are certified for free school meals without submitting a household application, such as those directly certified through the Supplemental Nutrition Assistance Program (SNAP). This final rule will expand access to CEP by lowering the required identified student percentage. This will provide more schools with an additional option for offering no-cost meals to students without requiring households to submit applications for free or reduced price meals.

This final rule would amend 7 CFR 245.9(f)(3)(i) to require a LEA, group of schools, or school to have an identified student percentage of at least 25 percent, as of April 1 of the school year prior to participating in CEP. Individual schools participating in CEP as part of a group would be permitted to have an ISP lower than 25 percent, provided that the group's aggregate ISP is at least 25 percent.

## **Reporting**

### **State Agencies**

The changes in this final rule impact the existing reporting requirement currently approved under OMB Control Number 0584-0026 and found at 7 CFR 245.9(f)(6), that requires State agencies to notify LEAs of their CEP status. USDA expects that the number of LEAs that

must be notified will increase by 5,131, based on the finalized changes and more recent and accurate data that became available after publication of the proposed rule.

USDA estimates the 54 State agency respondents will be required to notify approximately 95 additional LEAs each year, and that it takes approximately three minutes (.050 hours) to complete this reporting requirement for each record. The reporting requirement adds a total of 257 annual burden hours and 5,131 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that an additional 257 hours and 5,131 responses will be added to the collection.

## **LEAs**

The changes in this rule will impact the existing reporting requirements currently approved under OMB Control Number 0584-0026 for LEAs.

USDA estimates that 471 additional LEAs will elect CEP and will be required to fulfill the reporting requirement at 7 CFR 245.9(f)(4)(i), that requires LEAs to submit to the State agency documentation of an acceptable identified student percentage of the LEA/school electing the provision. This collection of information requirement is currently approved under OMB Control Number 0584-0026. This estimation is being updated from what was published in the proposed rule on March 23, 2023, to reflect more recent and accurate data that became available after publication of the proposed rule, along with the other estimations regarding the impact of PRA requirements in this section.

For this final rule, USDA estimates that the 471 LEA respondents will be required to submit identified student percentage data when electing CEP each year and that it takes approximately 15 minutes (.25 hours) to complete this reporting requirement for each record. The reporting requirement adds an estimated total of 118 annual burden hours and 471 responses into the new information collection request. Once this new collection is merged into OMB

Control Number 0584-0026, USDA expects that an additional 118 hours and 471 responses will be added to the collection.

USDA expects that as a result of the changes, more LEAs electing CEP will be electing CEP for all schools in the LEA, or district wide. This will result in a decrease in the number of LEAs required to process free and reduced price meal applications and conduct verification.

USDA estimates 471 fewer LEAs than currently approved under OMB Control Number 0584-0026 will be required to fulfill the requirement at 7 CFR 245.6(c)(6)(i), that requires LEAs to notify households of approval of meal benefit applications. USDA estimates that 14,869 LEA respondents will be required to notify 219 households of approval of meal benefit applications each year and that it takes approximately one minute (.02 hours) to complete this reporting requirement for each record. The reporting requirement adds a total of 65,126 annual burden hours and 3,256,311 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that there will be an approximate decrease of 2,288 hours and 114,364 responses.

USDA estimates 471 fewer LEAs than currently approved under OMB Control Number 0584-0026 will be required to fulfill the requirement at 7 CFR 245.6(c)(6)(ii), that requires LEAs to notify households in writing that children are eligible for free meals based on direct certification and that no application is required. USDA estimates that 14,869 LEA respondents will be required to notify 332 households in writing that children are eligible for free meals based on direct certification and that no application is required each year and that it takes approximately one minute (.02 hours) to complete this reporting requirement for each record. The reporting requirement adds a total of 98,730 annual burden hours and 4,936,508 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that there will be an approximate decrease of 3,186 hours and 159,268 responses.

USDA estimates 471 fewer LEAs than currently approved under OMB Control Number 0584-0026 will be required to fulfill the requirement at 7 CFR 245.6(c)(7), that requires LEAs to provide written notice to each household of denied free or reduced price benefits. USDA estimates that 14,869 LEA respondents will be required to provide written notice to approximately 12 households denied free or reduced price benefits each year and that it takes approximately one minute (.02 hours) to complete this reporting requirement for each record. The reporting requirement adds a total of 3,438 annual burden hours and 171,886 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that there will be an approximate decrease of 110 hours and 5,518 responses.

USDA estimates 471 fewer LEAs than currently approved under OMB Control Number 0584-0026 will be required to fulfill the requirement at 7 CFR 245.6a(f), that requires LEAs to notify households of selection for verification. USDA estimates that 14,869 LEA respondents will be required to notify approximately seven households of selection for verification and that it takes approximately 15 minutes (.25 hours) to complete this reporting requirement for each record. The reporting requirement adds a total of 24,162 annual burden hours and 96,649 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that there will be an approximate decrease of 930 hours and 3,720 responses.

USDA estimates 471 fewer LEAs than currently approved under OMB Control Number 0584-0026 will be required to fulfill the requirement at 7 CFR 245.6a(j), that requires LEAs to provide households that failed to confirm eligibility with 10 days' notice for receiving a reduction or termination of free or reduced price meal benefit. USDA estimates that 14,869 LEA respondents will be required to provide approximately three households that failed to confirm eligibility with 10 days' notice for receiving a reduction or termination of free or reduced price meal benefits and that it takes approximately six minutes (.1 hours) to complete this reporting

requirement for each record. The reporting requirement adds a total of 3,940 annual burden hours and 39,403 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that there will be an approximate decrease of 131 hours and 1,304 responses.

USDA estimates that 5,131 more LEAs than currently approved under OMB Control Number 0584-0026 will fulfill the requirement at 7 CFR 245.9(f)(5), that requires LEAs to submit to the State agency for publication a list of eligible and potentially eligible schools and their eligibility status, unless otherwise exempted by the State agency. USDA estimates that 5,131 LEA respondents will be required to submit to the State agency for publication a list of eligible and potentially eligible schools and their eligibility status each year and that it takes approximately five minutes (.08 hours) to complete this reporting requirement for each record. The reporting requirement adds a total of 410 annual burden hours and 5,131 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that 410 hours and 5,131 responses will be added to the collection.

USDA estimates that 471 more LEAs than currently approved under OMB Control Number 0584-0026 will fulfill the requirement at 7 CFR 245.9(g), that requires LEAs to amend free and reduced policy statements and certify that schools meet the eligibility criteria when electing CEP and that it takes approximately six minutes (.1 hours) to complete this reporting requirement for each record. The reporting requirement adds a total of 47 annual burden hours and 471 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that an additional 47 hours and 471 responses will be added to the collection.

## **Households**

Since households attending schools participating in CEP are not required to submit applications, USDA estimates that, with the changes, 108,941 fewer households than currently approved under OMB Control Number 0584-0026 will be required to fulfill the requirement at 245.6(a)(1), that requires households to complete an application form for free or reduced price meal benefits. USDA estimates that 3,439,137 household respondents will be required to submit applications and that it takes approximately seven minutes (.110 hours) to complete this reporting requirement for each record. The reporting requirement adds a total of 378,305 annual burden hours and 3,439,137 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that there will be an approximate decrease of 11,984 hours and 108,941 responses.

Households attending schools participating in CEP are also not required to assemble written evidence for verification of eligibility for free and reduced price meals and send to LEA. USDA estimates that 3,082 fewer households than currently approved under OMB Control Number 0584-0026 will be required to fulfill the requirement at § 245.6a (a)(7)(i), that requires households to assemble written evidence for verification of eligibility for free and reduced price meals and send to the LEA. USDA estimates that 97,287 household respondents will be required to assemble written evidence for verification of eligibility for free and reduced price meals and that it takes approximately 30 minutes (.5 hours) to complete this reporting requirement for each record. The reporting requirement adds a total of 48,644 annual burden hours and 97,287 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that there will be an approximate decrease of 1,542 hours and 3,082 responses.

## **Recordkeeping**

### **State Agencies**

The changes in this final rule will impact the existing recordkeeping requirement currently approved under OMB Control Number 0584-0026 and found at 7 CFR 245.9(f)(4)(ii), that require State agencies to review and confirm LEAs' eligibility to participate in CEP. USDA expects that State agencies will need to review an additional 471 LEAs with schools newly electing CEP, based on the changes in this rule and after analyzing more recent and accurate CEP participation data that became available after USDA published the proposed rule. USDA estimates that 54 State Agency respondents will be required to review and confirm LEAs' eligibility to participate in Provision 1, 2, or 3 or the Community Eligibility Provision for approximately 471 LEAs electing CEP each year and that it takes approximately five minutes (.08 hours) to complete this recordkeeping requirement for each record. The recordkeeping requirement adds a total of 38 annual burden hours and 471 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that an additional 38 hours and 471 responses will be added to the collection.

## **LEAs**

The changes in this final rule will impact the existing reporting requirements currently approved under OMB Control Number 0584-0026 for LEAs. USDA expects that as a result of the changes, more LEAs electing CEP will be electing CEP for all schools in the LEA, or district wide. This will result in a decrease in the number of LEAs required to maintain documentation substantiating eligibility determinations. USDA estimates 471 fewer LEAs than currently approved under OMB Control Number 0584-0026 will be required to fulfill the requirement at 7 CFR 245.6(e) to maintain documentation substantiating eligibility determinations for three years after the end of the fiscal year. USDA estimates that 14,869 LEA respondents will be required to maintain documentation related to substantiating eligibility determinations for three years after the end of the fiscal year and that it takes approximately 5 minutes (.08 hours) to complete this recordkeeping requirement for each record. The recordkeeping requirement adds a total of 1,190

annual burden hours and 14,869 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that there will be an approximate decrease of 37 hours and 471 responses.

USDA expects that as a result of the changes, 471 more LEAs than currently approved under OMB Control Number 0584-0026 will elect CEP and be required to fulfill the recordkeeping requirement at 7 CFR 245.9(h)(3) that LEAs maintain documentation related to the methodology used to calculate the identified student percentage and determine eligibility for the CEP. USDA estimates that 471 LEA respondents will be required to maintain documentation related to methodology used to calculate the identified student percentage and determine eligibility and that it takes approximately 55 minutes (.910 hours) to complete this recordkeeping requirement for each record. The recordkeeping requirement adds a total of 429 annual burden hours and 471 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that an additional 429 hours and 471 responses will be added to the collection.

USDA does not expect lowering the threshold to participate in CEP to an ISP of 25 percent to impact the approved public notification requirements at 7 CFR 245.9(f)(7). While this rule will increase the number of schools eligible for the CEP, the burden for states to notify LEAs of their community eligibility status due to the increased number of eligible schools is already captured above in the reporting requirements at 7 CFR 245.9(f)(6). Making these lists publicly available will not take any additional time than is currently approved under OMB Control Number 0584-0026. Accordingly, this requirement is not addressed in this information collection.

### **One Time Annual Cost**

In recognition that State agencies may have to update or reprogram systems to accommodate the proposed minimum ISP, FNS is adding an estimated one-time, system

modification cost, which will be included in the information collection request associated with this final rule. FNS received 2 comments that State agencies may modify existing systems in response to this rulemaking. In addition, FNS met with another State agency on August 16, 2023, and discussed how lowering the minimum ISP would impact that State's system. FNS received feedback indicating updates to State systems could be done efficiently and in time to allow LEAs the opportunity to implement CEP at the lower ISP threshold soon after the final rule was effective, and encouraged FNS to allow mid-year election.

Given the wide variation of systems in place, programming and maintenance costs across State agencies varies. After considering feedback and analyzing different systems States have in place, FNS is including an estimated one-time cost of \$2,000 per State agency to make system modifications in response to the lowered ISP. As a result of the proposals outlined in this final rule, FNS estimates that this collection is expected to have \$108,000 in costs related to system modifications, which will be added as a one-time, annual cost to the information collection requirements associated with the final rule, OMB Control Number 0584-00XX.

## **Summary**

As a result of the proposals outlined in this final rule, FNS estimates that this new information collection will have 3,454,060 respondents, 12,064,195 responses, and 624,833 burden hours. The average burden per response and the annual burden hours are explained below and summarized in the charts which follow. Once the information collection requirement (ICR) for the final rule is approved and the requirements and associated burden for this new information collection are merged into the existing collection, FNS estimates that the burden for OMB Control Number 0584-0026 will decrease by 384,522 responses and 18,908 burden hours. The collection will also have a one-time increase of \$108,000 in annual costs related to system modifications.

## Reporting

Respondents (Affected Public): Individual/Households; and State, Local and Tribal Government. The respondent groups identified include households, State Agencies and LEAs.

Estimated Number of Respondents: 3,454,060

Estimated Number of Responses per Respondent: 3.49

Estimated Total Annual Responses: 12,048,384

Estimated Time per Response: 0.052 (approximately 3 minutes)

Estimate Total Annual Burden on Respondents: 623,177 hours

## Recordkeeping

Respondents (Affected Public): State, Local and Tribal Government. The respondent groups identified include State Agencies and LEAs.

Estimated Number of Respondents: 14,923

Estimated Number of Responses per Respondent: 1.06

Estimated Total Annual Responses: 15,811

Estimated Time per Response: .105 (approximately 6 minutes)

Estimate Total Annual Burden on Respondents: 1,656 hours

**Reporting**

Description of Activities	Regulation Citation	Estimated # of Respondents	Frequency of Response	Total Annual Responses	Average Burden Hours per Response	Estimated Total Annual Burden Hours for OMB# 0584-00xx Due to Final Rulemaking	Hours Currently Approved Under OMB# 0584-0026	Estimated Future Burden Hours for OMB# 0584-0026 After the Merge with OMB# 0584-00xx	Estimated Future Change in Burden Hours for OMB# 0584-0026 Due to Rulemaking
State agency to notify LEAs of their community eligibility status as applicable	245.9(f)(6)	54	95.02	5,131	0.050	257	436	693	257
<b>Total State Agency Reporting</b>		54	95.02	5,131	0.050	257	436	693	257
LEAs submit to State agency documentation of acceptable identified student percentage of LEA/school electing the provision	245.9(f)(4)(i)	471	1.00	471	0.250	118	125	243	118
LEAs notify households of approval of meal benefit applications	245.6(c)(6)(i)	14,869	219.00	3,256,311	0.020	65,126	67,414	65,126	-2,288
LEAs must notify households in writing that children are eligible for free meals based on direct certification and that no application is required	245.6(c)(6)(ii)	14,869	332.00	4,936,508	0.020	98,730	101,916	98,730	-3,186
LEAs provide written notice to each household of denied free or reduced price benefits	245.6(c)(7)	14,869	11.56	171,886	0.020	3,438	3,548	3,438	-110
LEAs notify households of selection for verification	245.6a(f)	14,869	6.50	96,649	0.250	24,162	25,092	24,162	-930
LEAs must provide	245.6a(j)	14,869	2.65	39,403	0.100	3,940	4,071	3,940	-131

households that failed to confirm eligibility with 10 days' notice for receiving a reduction or termination of free or reduced price meal benefits									
LEA to submit to the State agency for publication a list of eligible and potentially eligible schools and their eligibility status; unless otherwise exempted by State agency	245.9(f)(5)	5,131	1.00	5,131	0.080	410	698	1,108	410
LEAs to amend free and reduced policy statement and certify that schools meet eligibility criteria	245.9(g)	471	1.00	471	0.100	47	50	97	47
<b>Total Local Education Agency Reporting</b>		14,869	572.12	8,506,829	0.023	195,972	202,914	196,845	-6,069
<b>Total State and Local Agency Level Total</b>		14,923	667.14	8,511,960	0.073	196,228	203,350	197,537	-5,813
Households complete application form for free or reduced price meal benefits	245.6(a)(1)	3,439,137	1.00	3,439,137	0.110	378,305	390,289	378,305	-11,984
Households assemble written evidence for verification of eligibility for free and reduced price meals and send to LEA	245.6a(a)(7)(i)	97,287	1.00	97,287	0.500	48,644	50,185	48,644	-1,542
<b>Total Household Reporting</b>		3,439,137	1.03	3,536,424	0,121	426,949	440,474	426,949	-13,525
<b>Total Reporting</b>		3,454,060	3.49	12,048,384	0.052	623,177	643,824	624,486	-19,338

<b>Recordkeeping</b>									
<b>Description of Activities</b>	<b>Regulation Citation</b>	<b>Estimated # of Respondents</b>	<b>Frequency of Response</b>	<b>Total Annual Responses</b>	<b>Average Burden Hours per Response</b>	<b>Estimated Total Annual Burden Hours for OMB# 0584-00xx Due to Rulemaking</b>	<b>Hours Currently Approved Under OMB# 0584-0026</b>	<b>Estimated Future Burden Hours for OMB# 0584-0026 After the Merge with OMB #0584-00xx</b>	<b>Estimated Future Change in Burden Hours for OMB# 0584-0026 Due to Rulemaking</b>
State Agency to review and confirm LEAs eligibility to participate in Provisions 1, 2, or 3 or the Community Eligibility Provision	245.9(f)(4)(ii)	54	8.72	471	.080	38	40	78	38
<b>Total State Agency Recordkeeping</b>		<b>54</b>	<b>8.72</b>	<b>471</b>	<b>0.080</b>	<b>38</b>	<b>40</b>	<b>78</b>	<b>38</b>
LEA must maintain documentation substantiating eligibility determinations for 3 years after the end of the fiscal year	245.6(e)	14,869	1	14,869	0.080	1,190	1,227	1,190	-37
LEA to maintain documentation related to methodology used to calculate the identified student percentage and determine eligibility	245.9(h)(3)	471	1	471	.910	429	455	884	429
<b>Total Local Education Agency Recordkeeping</b>		<b>14,869</b>	<b>1.03</b>	<b>15,340</b>	<b>0.105</b>	<b>1,618</b>	<b>1,682</b>	<b>2,073</b>	<b>391</b>

<b>Total Recordkeeping</b>		<b>14,923</b>	<b>1.06</b>	<b>15,811</b>	<b>0.105</b>	<b>1,656</b>	<b>1,722</b>	<b>2,151</b>	<b>429</b>	
			<b>OMB# 0584-00xx Due to Rule</b>				<b>OMB # 0584-0026 Once Merged with OMB# 0584-00xx</b>			
TOTAL NO. RESPONDENTS			3,454,060				3,462,370			
AVERAGE NO. RESPONSES PER RESPONDENT			3.493				3.514			
TOTAL ANNUAL RESPONSES			12,064,195				12,165,673			
AVERAGE HOURS PER RESPONSE			0.052				.053			
TOTAL BURDEN HOURS			624,833				645,818			
CURRENT OMB INVENTORY			0				664,726			
TENTATIVE DIFFERENCE DUE TO RULEMAKING			624,833				-18,908			

***E-Government Act Compliance***

The Department is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

**List of Subjects in 7 CFR Part 245**

Civil rights, Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping requirements, School breakfast and lunch programs.

Accordingly, 7 CFR part 245 is amended as follows:

**PART 245 – DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS**

1. The authority citation for 7 CFR part 245 continues to read as follows:

**Authority:** 42 U.S.C. 1752, 1758, 1759a, 1772, 1773, and 1779.

**§ 245.9 [Amended]**

2. In § 245.9, in paragraph (f), remove “40 percent” and “30 percent” wherever they appear and add in their places “25 percent” and “15 percent”, respectively.

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**Cynthia Long,**

*Administrator,*

*Food and Nutrition Service.*

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